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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,174	02/20/2004	Malcolm Thomas Hammond	263593.00002	4503

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CANADA

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

04/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,174

Applicant(s)

HAMMOND, MALCOLM THOMAS

Examiner

JACK H. MORGAN JR

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8, 9, 11-13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 11-13 and 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 6 and 14 of the previous office action is withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-5, 16 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The relationship between the supporting member and the upper bar and between the upper bar and the cradle of claims 1 and 19, and further the relationship of the stabilizer bar of claim 16 to the remaining invention. Examiner notes that while the specification clearly sets forth the relationships between these pieces, in order for the claims to make sense, the relationships (ie what is attached to what) must be set forth.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7-13, 16 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaver (US 5,996,870). Shaver discloses a vehicle mounted bicycle carrier (Figs 1-2) having a generally vertical supporting member (28) mountable to a vehicle via means for mounting to a hitch (18), a horizontal upper bar (32) mounted generally perpendicular to the rear of the vehicle and a cradle (36) having first and second structures, said first structure having said first and second tines and said second structure having third and fourth tines (the four tines can be seen as 38), said first and second tines forming a V-shaped structure and said third and fourth tines forming a V-shaped structure and having tie down means (88) to secure the bike more firmly to the cradle. Examiner notes that the carrier of Shaver is capable of mounting a bicycle via the fork crown, though it only shows the attachment to the lower bar of the bicycle. Further, the cradle is mounted in such a way that it is capable of supporting the handlebars at an angle other than perpendicular to the bicycle (by not attaching the fork crown in such a way that the wheel is held within arm (42)).

Shaver further discloses a plurality of cradles mounted on the upper bar for receiving a plurality of bicycles (Fig 3) as well as a second bar (34) with means (96) for

securing a bicycle rear wheel. Shaver also discloses the horizontal upper bar (32) being mounted generally perpendicular to the rear of the vehicle.

4. Claims 1-3, 5, 7-10, 12-13, 18 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bernd (EP 95,548 A2). Bernd discloses a vehicle mounted bicycle carrier (Figs 1-3) having a generally vertical supporting member (Fig 2, 6) mountable to a vehicle via means for mounting to a hitch (See Fig 3, right side), a horizontal upper bar (Fig 1, attached to (and through) 4) mounted generally perpendicular to the rear of the vehicle and a cradle (1) having first and second structures (2), said first structure having said first and second tines and said second structure having third and fourth tines (the four tines can be seen as 2 and 5b in Fig 1, the top embodiment), said first and second tines forming a V-shaped structure and said third and fourth tines forming a V-shaped structure and having tie down means (5a, insofar as applicant sets forth the tie down means) to secure the bike more firmly to the cradle. Examiner notes that the carrier of Bernd is capable of mounting a bicycle via the fork crown, though it only shows the attachment to the handlebar of the bicycle. Further, since the bicycle is able to rotate freely from the handlebars, that the cradle is mounted in such a way that it is capable of supporting the handlebars at an angle other than perpendicular to the bicycle.

Bernd further discloses a plurality of cradles mounted on the upper bar for receiving a plurality of bicycles (Fig 3) as well as the horizontal upper bar (4) being mounted generally perpendicular to the rear of the vehicle.

5. Claims 19, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Preston (WO 03/06214 A1). Preston discloses a bicycle carrier comprising a supporting member (26) mountable to a vehicle (11), an upper bar (22) and a cradle (20) with a V-shaped structure comprising first (54) and second (56) tines, a bicycle's fork crown being positionable between the tines, said bicycle suspendable vertically. Examiner notes that as the bicycle is allowed to rotate freely from the handlebars, that the cradle is mounted in such a way that it is capable of supporting the handlebars at an angle other than perpendicular to the bicycle (indeed, if the bicycle is secured to the central post, this would be the case).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaver (US 5,996,870) in view of Johansson (DE 3,890,700 C2). Shaver discloses all the limitations of the claim except for the stabilizer bar further comprising a hook to hold the rear tire in place, instead disclosing an optional band (96) to hold the tire in place.

Johansson discloses a bicycle rack (Fig 1) having a hook portion (41 See Fig 2-5) in order to easily engage the wheel to the stabilizer bar, and adjust for different size wheels (via 53a-c). Therefore it would have been obvious to one of ordinary skill in the

art at the time of invention to create the bike rack of Shaver with the hook of Johansson in order to easily and adjustably secure the rear wheel of a bicycle to the stabilizer bar.

Response to Arguments

7. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK H. MORGAN JR whose telephone number is (571)272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782